



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

PETITION NO. 38 OF 2019

PETER IRERI KIMOTHO.....1ST PETITIONER

STEPHEN KATHURI KIMOTHO.....2ND PETITIONER

STELLA NJOKI MWANGI.....3RD PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

A. Introduction

1. The petitioners herein moved the court vide a joint undated petition but which was filed in court on 29/10/2019. despite the petitioners mainly for orders for re-hearing on sentence pursuant to the decision of the Supreme Court in the **Francis Karioko Muruatetu Petition No. 15 of 2015.**
2. The petition was premised on the grounds that the petitioners were initially charged before the High Court Embu with the offence of murder contrary to Section 203 a read with Section 204 of the Penal Code vide Criminal Case No. 24 of 2009 and sentenced to death. The petitioners filed an appeal in the Court of Appeal Criminal Appeal No. 33 of 2013 which was dismissed.
3. When this petition came up for hearing, the 1st, 2nd and the 3rd petitioners elected to argue their petition by way of written submissions.
4. The 1st petitioner in rebuttal stated that he was remorseful and prayed that his petition be allowed. The 3rd petitioner on his part submitted in rebuttal that he had reformed while in prison and prayed to be granted a lesser sentence. He further stated that he had a child aged 20 years who was a special need child and who needed his parental care.
5. Ms. Mati for the respondent submitted orally in response to the petition that she was not opposed to the revision of the sentence but urged the court to take into account the seriousness of the offence and the circumstances under which the offence was committed. She further stated that the sentence meted upon the petitioners was reduced by the Court of Appeal to life imprisonment.

B. Analysis of the law

6. I have perused the petition as well as the respective submissions of the petitioner and the respondent. I find that the first issue for determination is whether this court has jurisdiction to hear this petition. If the answer is in the affirmative, the court will proceed to decide on whether the petition is merited.
7. The petitioners were dissatisfied with the judgment of the court whereas the trio were convicted of the offence of murder contrary to Section 203 and 204 of the Penal Code in HCCR. No. 24 of 2009. The petitioners were sentenced to death on 12/04/2013 which was the period preceding the **Muruatetu** petition.
8. The hierarchy of courts in Kenya as far as this court is concerned is that the High Court has original jurisdiction to hear a charge of murder under Sections 203 and 204 of the Penal Code. Upon conviction, the accused may appeal in the Court of Appeal if not satisfied with the judgment of the High Court.
9. The petitioners filed an appeal in the Court of Appeal sitting at Nyeri No. 33 of 2013. The result of the appeal was that it was dismissed for lack of merit. In conclusion of its judgment delivered on 11th July 2019, the Court of Appeal stated as follows:

“We find no justification in interfering with the sentences handed down against the appellants by the trial court, and which we find merited in the circumstances”.

10. From the foregoing pronouncement, it leaves no doubt that the court of Appeal considered the petitioners’ concerns on the sentences and found no reason to interfere with the trial court’s orders on sentence.

11. The Court of Appeal having said that, this court cannot arrogate itself the power it does not possess of reviewing the decision of higher court by way of resentencing.

12. It is important to note that the information by the respondent of reducing the sentence from death to life imprisonment is not supported by the Court of Appeal judgment.

13. I am of the considered opinion that the principles of the Muruatetu Petition (supra) are not applicable in this petition.

14. The petition is accordingly struck out for want of jurisdiction.

15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF JUNE, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for Respondent

Petitioner through video link